# UNITED STATES PATENT AND TRADEMARK OFFICE

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| 10/045,159 | 01/15/2002 | C. Hudson Hendren III | 06975-036002 | 9294 |

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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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| 2155 | |

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on <u>24 July 2003</u> .

2a) ☒ This action is **FINAL**.          2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) <u>24-54</u> is/are pending in the application.

     4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>24-54</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

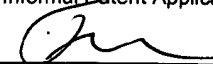8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

     If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

     a) ☐ All  b) ☐ Some * c) ☐ None of:

         1. ☐ Certified copies of the priority documents have been received.

         2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

     * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

     a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

## DETAILED ACTION

1.      This is in response to the Amendment file on 7/24/3003 (paper #6).  Claims 24-43 and

new claims 44-54 are presented for examination.

### *Claim Objections*

2.      Claim 53 is objected to because of the following informalities:

There seems to be a typo error in page 6 of the Amendment " there are **two claims 53**".

Examiner assumed the *second claim 53* to be replaced by **54**.

Therefore, claims 24-54 are presented in the instant application.

Appropriate correction is required.

### *Double Patenting Rejection*

3.      The nonstatutory double patenting rejection is based on a judicially created doctrine

grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

harassment by multiple assignees. See *In re Goodman,* 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Cir. 1993); *In re Longi,* 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van* Ornum, 686

F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel,* 422 F.2d 438, 164 USPQ 619 (CCPA

1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321 (b) and (c) may be

used to overcome an actual or provisional rejection based on a nonstatutory double patenting

ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4.      Claims 24-54 are rejected under the judicially created doctrine of double patenting over claims 1-16 of U. S. Patent No.6,353,855.   Although the conflicting claims are not identical, they are not patentably distinct from each other because the following reasons:

As to claims 24, 35 and 38, claims 1 and claim 7 of the above patent recite all the limitations in claims 24, 35 and 38 (see col.5 line 60 to col.6 line 11 and col.6 lines 25-27).   However, the claimed invention in the instant application is fully disclosed in the patent and it is *broader* than the claimed invention in the patent.  No new invention, or new improvement is being claimed in the instant application. Applicant now is *attempting to claim broadly that which had been previously described in more detail in the claims of the patent* (In re Van Ornum, 214 USPQ 761 CCPA 1982).

Claims 24, 35 and 38 in the instant application is made broader than claim 1 of the above patent by removing the steps of " *determining one or more comprehension characteristics of the user who issued the request*".

Furthermore, there is no apparent reason why Applicant was prevented from presenting and prosecuting claims corresponding to those of the instant application during prosecution of the application which matured into a patent.

As to claim 25, claim 2 of the above patent discloses all the limitations in claim 25 (see col.6 lines 11-13).

As to claim 26, Hendren discloses selecting message at the client (see col.5 lines 9-51).

As to claims 27-34, claims 7, 9, 10, 15, 12, 9, 16 and 17 of the above patent disclose all the limitations in claims 27-34 (see col.6 line 12 to col.7 line 5).

As to claims 36, 37 and 39-44, claims 9, 10, 2, 9, 2, 9, 10 and 2 of the above patent discloses all the limitations in claims 36, 37 and 39-44 (see col.6 line 12 to col.7 line 5).

As to claims 45, 46, 48, 49, 52-54, Hendren does not specifically disclose using proxy server, file status indicator, error message, and a web page. However, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to implement those teachings into the computer system of Hendren because it would have allowed users to interact with different types of users and network more conveniently.

As to claims 47, 50 and 51, claims 2, 9 and 10 of the above patent discloses all the limitations in claims 47, 50 and 51 (see col.6 line 12 to col.7 line 5).

## Art Rejection

### Claim Rejections - 35 USC § 103

5.     The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.       Claims 24-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider

et al. US pat. No.6,105,027 in view of Vyaznikov US pat. No.6,289,372.

As to claim 24, Schneider discloses a method of providing information based on user

comprehension characteristics of a user, the method comprising:

        receiving data related to one or more on a user and selecting a message from a plurality

of messages based upon the received data related to one or more of a user's information (access

information divided into five broad categories from database, see abstract, figs.2, 3, col.7 line 42

to col.8 line 58), wherein the plurality of messages include a first message that corresponds to a

first data related to a first set of user information (user identification 313 fig.3) and a second

message that corresponds to a second data related to a second set of user information (trust

information) and providing the message (see col.8 line 59 to col.10 line 54 and col.11 line 54 to

col.12 line 65).

Schneider does not specifically disclose the data information based on level of technical

efficiency.  However, Vyaznikov discloses the data information based on level of technical

efficiency (see abstract, figs.1, 2, col.2 lines 20-63 and col.3 line 29 to col.4 line 61).  It would

have been obvious to one of the ordinary skill in the art at the time the invention was made to

implement Vyaznikov's message into the computer system of Schneider to exchange data

information because it would have enhanced the efficiency of processing messages and reduced

of loss information in the communications network.

As to claim 25, Schneider discloses that a first computer (client of fig.2) providing the message

and transmitting the message to a second computer (server of fig.2) (see fig.2, col.7 line 42 to

col.8 line 58 and col.23 line 14 to col.24 line 56)

As to claim 26, Schneider discloses performing message selection at a client (see fig.2, col.15

line 31 to col.16 line 44 and col.23 line 14 to col.24 line 56).

As to claims 27, 31-33, 42, 43, Vyaznikov discloses the data information based on level of

technical efficiency (see abstract, figs.1, 2, col.2 lines 20-63 and col.3 line 29 to col.4 line 61).  It

would have been obvious to one of the ordinary skill in the art at the time the invention was

made to implement Vyaznikov's message into the computer system of Schneider to exchange

data information because it would have enhanced the efficiency of processing messages and

reduced of loss information in the communications network.

As to claims 28 and 29, Schneider discloses selecting a message based  on one or more preferred

languages of the user (see fig.5, col.17 line 45 to col.18 line 65 and col.21 line 15 to col.22 line

34).

As to claim 30, Schneider discloses the message comprising at least one of the

following: text, graphics, video, animation, sound and instructions (i.e., displaying information in

windows, see col.23 line 14 to ocl.24 line 67).

As to claim 34, Schneider discloses receiving an HTTP (Hyper Text Transfer Protocol) indicator

at the first computer in response to a user's HTTP request for a URL (Universal Resource

Locator) provided by the second computer (see fig.3, col.3 line 32 to col.4 line 63 and col.8 line

59 to col.9 line 67).


As to claim 35, Schneider discloses an apparatus for providing a message based on user

comprehension characteristics comprising:

        a data receiver arranged and structured so as to receive data related to one or more user

information (access information divided into five broad categories from database, see abstract,

figs.2, 3, col.7 line 42 to col.8 line 58).

        a data store (206 fig.2) arranged and structured so as to store a plurality of messages

wherein the plurality of messages include a first message that corresponds to a first data related

to a first set of user information (user identification 313 fig.3), a second message that

corresponds to a second data related to a second set user information (Trust information) and a

first computer that selects a message from the plurality of messages and provides the message

(see col.8 line 59 to col.10 line 54 and col.11 line 54 to col.12 line 65).

Schneider does not specifically disclose the data information based on level of technical

efficiency. However, Vyaznikov discloses the data information based on level of technical

efficiency (see abstract, figs.1, 2, col.2 lines 20-63 and col.3 line 29 to col.4 line 61). It would

have been obvious to one of the ordinary skill in the art at the time the invention was made to

implement Vyaznikov's message into the computer system of Schneider to exchange data

information because it would have enhanced the efficiency of processing messages and reduced

of loss information in the communications network.

Claims 36 and 37 are rejected for the same reasons set forth in claims 27 and 29 respectively.

Claim 38 is rejected for the same reasons set forth in claim 1. As to the added limitations,

Schneider further discloses receiving an indicator (indication 311 fig.3) and providing the

message to a computer (fig.3, col.8 line 59 to col.9 line 67).

Claims 39-41 are rejected for the same reasons set forth in claims 26, 28 and 31 respectively.

As to claims 44-47 and 52-54, Schneider discloses that a message is performed at an intervening

agent between a client computer and a server computer, a proxy server, a network status

indicator and a web page (see Schneider's summary, figs.2, 3, col.21 line 15 to col.22 line 62 and

col.25 lines 1-60).

Claims 48-51 are rejected for the same reasons set forth in claims 45, 46, 28, 29 and 29

respectively.

## Conclusion

7.     Claims 24-54 are *rejected.*

8.      Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.


9.      Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Khanh  Dinh whose telephone number is 703-308-8528. The

examiner can normally be reached on 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Alam Hosain, can be reached on 703-308-6662. The Official fax phone number for

the organization where this application or proceeding is assigned to be (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is 703-305-9600.

Khanh  Dinh

Examiner

Art Unit 2155

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October 3, 2003

FRANTZ B. JEAN
PRIMARY EXAMINER